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मामला क्रमांक ..... **सन् 200**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

MISC. APPEAL NO. 11/2006

APPELLANT
(Non-Applicant 3)

United India Insurance Co. Ltd., Branch Manager, United India Insurance Co. Ltd., Anupama Chowk, Jagdalpur, Divisional Office, Katchury Chowk, Raipur (CG)

VERSUS

RESPONDENTS

1. Gautam Chand Jain, S/o. Hukmi Chand Jain, aged 33 years, R/o. Main Road, Khas Tongpal, Distt. Dantewada (CG)

(Non-applicant 1)

2. Shantilal Jain, S/o. Hukmi Chand Jain, aged 24 years, R/o. Main Road Khas Tongpal, Distt. Dantewada (CG)

(Non-applicant 2)

3. Mangduram Podyaam, S/o. Panduram, aged 38 years, Caste Muria, R/o. village Kuma Kaleng, Thana Tongpal, District Dantewada (CG)

(Applicant/ Claimant)

MISC. APPEAL NO. 10/2006

APPELLANT
(Non-applicant 3)

United India Insurance Co. Ltd., Branch Manager, United

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		India Insurance Co. Ltd., Anupama Chowk, Jagdalpur Divisional Office, Katchury Chowk, Raipur (CG)
	VERSUS	
	RESPONDENTS	1. Gautam Chand Jain, S/o. Hukmi Chand Jain, aged 33 years, R/o. Main Road, Khas Tongpal, Distt. Dantewada (CG) (Non-applicant 1)
		2. Shantilal Jain, S/o. Hukmi Chand Jain, aged 24 years, R/o. Main Road Khas Tongpal, Distt. Dantewada (CG) (Non-applicant 2)
		3. Hungaram Podyaam @ Ungaram S/o. Sukdaram, aged 32 years, R/o. village Kokalpal, Thana Tongpal, District Dantewada (CG) (Applicant/ Claimant)
	Dhirendra Mishra, J.	
	07.05.2007	
	Shri Sanjay S. Agrawal, counsel for the appellant.	
	Shri V. Rathore, counsel for respondent No.1 & 2.	
	Shri Vivek Sharma, counsel for respondent No.3.	
	Heard.	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	M.A. No. 11/2006 & M.A. No. 10/2006 are being disposed of by this common order as both these appeals are directed against the common award dated 05.10.2005 passed by 3rd Additional Motor Accident Claims Tribunal, Jagdalpur in Claim Case No. 33/2004 & 34/2004 whereby the learned Tribunal has awarded a sum of Rs.78,000/- to injured Hunga Ram and Rs.74,000/- to injured Mangdu Ram for the injuries sustained by them in the accident dated 03.06.2003 involving Jeep No. CG-18/D-0126 belonging to Shanti Lal Jain–respondent No.2 and driven rashly and negligently by Goutam Chand Jain-respondent No.1 at the relevant time. The only ground urged by the learned counsel for the appellant was that the vehicle in question was insured as a private vehicle by the appellant at the relevant time. However the same was being used for the hire purposes in breach of insurance policy conditions. Admittedly, there is an allegation that the vehicle in question, dashed against the stationary truck, which was parked in the centre of the road in negligent manner, but even then the claimant has not arrayed the owner, driver and the Insurer of the said truck as parties, though the evidence regarding negligence of the driver in parking the vehicle in the centre of road is available on record.	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Reliance is placed on the judgment delivered in the matter of ***United India Insurance Company Ltd. Vs. Smt. Bela Marya & Others*** reported in ***AIR 1996 Rajasthan 126.***

On the other hand learned counsel for the respondent submitted that there is no evidence available on record to show that the vehicle was used for hire purpose and that too with the permission of the owner. On the contrary the passengers have categorically stated that they did not pay any fare to the driver and they were forcibly taken to Raipur for participating in a meeting. With respect to the objection raised by the appellant that the owner & driver of the truck were involved in the accident, it has been urged that no specific objection has been raised by the Insurance Company before the Tribunal. The claimants have filed the petition on the allegation that the driver of the jeep was driving the vehicle rashly & negligently, he dashed the jeep with the truck and in these circumstances the Insurance Company cannot be permitted to raise this ground for the first time in this appeal.

Heard learned counsel for the parties.

I have perused the impugned award as also the material available on record.

The appellants of both these appeals have filed this appeal with the averments that they were travelling with the Commander jeep bearing registration No. CG-18/D-0126, which was driven

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

rashly and negligently by Goutam Chand Jain and owned by Shanti Lal Jain. On the date of accident, they were proceeding to participate in some meeting at Raipur, when the driver dashed the jeep from back side of the stationary truck they sustained injuries. In reply, non-applicant No.1 & 2 i.e. driver & owner of the offending vehicle, denied the allegations of rash & negligent driving as also the other averments regarding injuries sustained by the applicants, entitlement of compensation and stated that the vehicle in question was insured with non-applicant No.3 for the relevant period. The driver was having valid and effective license for driving the jeep. The accident was also denied.

Non-applicant No.3/appellant herein also denied the averments of the claim petition and further stated that at the relevant time nine passengers were travelling by the said jeep. Non-applicant No.3 also took an objection that this is a case of collusion between two vehicles and therefore, drivers of both the vehicles were responsible for the accident. Rest of the averments of the claim petition has been denied and it is further objected that the driver of the vehicle was not possessing valid and effective license at the time of accident.

So far as the contention of the appellant that it is a case of collusion between two vehicles and from the evidence available on record it is evident that negligence on the part of the driver of truck

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

in parking the vehicle is writ large is concerned, since the applicants in their claim petition have not attributed any negligence to the driver of stationary truck and the non applicant No.3 have also not attributed any negligence on the driver of stationary truck, therefore, there wasn't any issue before the Tribunal whether the accident occurred because of negligence of the driver of the truck or Commander jeep and as such there was no issue before the Tribunal of composite negligence and apportionment of the liability between two colluding vehicles. Therefore, in the absence of pleading by the appellant in this regard, the appellant cannot be permitted to raise this issue for the first time in this appeal.

The second objection regarding use of the offending jeep, which has been insured for the private purpose i.e. for the purpose of hire and reward, is concerned, the appellant in Paragraph Nos. 20 & 21 of its written statement has stated that the driver of offending vehicle did not have valid and effective licence and on the date of accident, nine passengers were travelling in the said vehicle who were proceeding for Raipur to participate in some meeting and thus the vehicle was being used in violation of the insurance policy and in these circumstances non applicant No.3/appellant is not responsible to indemnify the insured.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The insurer, in order to successfully disclaim its liability on the ground mentioned in Section 147 (2)(a) of the Motor Vehicles Act, 1988 has to establish:

i) that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for hire or reward.

ii) that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or reward.

iii) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward, and

iv) that the vehicle was used by the insured or at his instance in breach of specific conditions including a condition that in the goods vehicle passengers for hire or reward were not to be carried. If it is done without knowledge of the insured by the driver's acts or omission, the insurer would be liable to indemnify the insured.

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Now if we examine the present matter in the light of the aforementioned settled law, from perusal of Insurance policy of Ex. D-1, it is clear that the vehicle is insured for personal accident to unnamed passengers nine in number. There is specified condition in the policy that excludes the use of insured vehicle for any passenger for hire or reward.

Now the question is whether the Insurance Company has been able to establish this fact that the vehicle in question was in fact used for hire or reward and that too, with the permission of the insured. The Insurer has nowhere stated in its reply in specific term that at the time of accident owner of the vehicle was using the insured vehicle for the purposes of hire and reward. respondent/Claimant-Mangdu Ram (A.W.-1) in Claim Case No. 34/2004, in para 10 has stated that they have taken the vehicle on hire for three days for the purpose of going to Raipur and further he has stated that they had paid the fare. However he does not disclose that from whom he had taken the jeep and whether he had taken the jeep on hire from the owner.

A.W.-2 Hunga Ram Podyami has expressed ignorance regarding hiring the vehicle. Respondent No.1/Non-applicant No.1-Goutam Chand Jain, driver of the vehicle has stated that he did not charge any fare on the claimants nor he has charged any reward from them. He was going to Raipur on his own work and he had taken them in their jeep as they were known to him. He has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

denied the suggestion that the vehicle was taken on hire for three days. Manoj Kumar Rai D.W.-2, who was examined on behalf of the appellant, has stated that the vehicle was insured as a private car, however, the same was being used for carrying passengers on hire which amounts to commercial use. He has admitted that the vehicle was insured by the appellant.

There is no evidence available on record to show that the vehicle was let on hire or reward by the insured and therefore the ground taken by the appellant that the vehicle was being used in violation of the policy condition has not been established by the appellant by leading evidence for the same.

On the basis of the aforesaid discussions in both the appeals (M.A. No.11/2006 and M.A. No. 10/2006) preferred by the appellant, there is no ground available to the Insurance Company to challenge the impugned award. There is no illegality or infirmity in the impugned award, the appeals being devoid of substance are liable to be dismissed and they are hereby dismissed.

A copy of this order be placed with M.A. No.10/2006.

Sd/-
Dhirendra Mishra
Judge

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